

SERVICE DATE – MAY 11, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 355X)

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY—  
ABANDONMENT EXEMPTION—IN SCOTT COUNTY, TENN.

Decided: May 11, 2015

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 12.63 miles of rail line from milepost NR 0.0 at New River to milepost NR 12.63 at Sterling, in Scott County, Tenn. Notice of the exemption was served and published in the Federal Register on February 4, 2015 (80 Fed. Reg. 6,175). The exemption became effective on March 6, 2015.

By decision served on March 5, 2015, the Board imposed two environmental conditions and one historic preservation condition recommended by the Board's Office of Environmental Analysis (OEA). The environmental conditions require CNOTP to: (1) consult with and notify the National Geodetic Survey at least 90 days prior to the commencement of any salvage activities that would disturb or destroy any identified geodetic station markers to plan for the possible relocation of the geodetic station markers; and (2)(a) prior to the commencement of any salvage activities, consult with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of salvage activities on Federally listed mussel species in the project area and comply with the reasonable recommendations of USFWS to mitigate any potential impacts, (b) report the results of any consultations with USFWS to OEA, (c) ensure that any entity undertaking the salvage activities shall comply with the mitigation measures recommended by USFWS, and (d) ensure that any entity undertaking salvage activities implement the best management practices recommended by USFWS for salvage activities that would involve the removal of bridges or that could potentially impact streams or stream banks. The historic preservation condition require CNOTP to: (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 30618 (formerly 16 U.S.C. § 470f) has been completed, (b) report back to OEA regarding any consultations with the Tennessee Historical Commission (State Historic Preservation Office or SHPO) and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

In a Supplemental Final Environmental Assessment dated April 14, 2015, OEA states that on April 14, 2015, it received a letter from the SHPO dated April 9, 2015, in which the SHPO states that the proposed abandonment would not affect any properties that are listed in or eligible for listing in the National Register. OEA has reviewed the available information and following consultation with the SHPO, CNOTP, and the public, pursuant to the Section 106 regulations of NHPA at 36 C.F.R. § 800.5(b), it has been determined that the proposed abandonment would not adversely affect historic properties listed in or eligible for listing in the National Register. Accordingly, OEA concludes that the Board has satisfied its responsibilities under Section 106 of the NHPA and recommends that the Section 106 condition imposed in the Board's March 5, 2015 decision be removed.

OEA states that the SHPO requests in its April 9, 2015 letter that, should any archaeological remains be discovered during salvage activities, CNOTP should cease operations and contact the SHPO in order to determine what further action, if any, would be necessary to comply with the Section 106 process. In response to the SHPO's concerns regarding discoveries of archaeological resources, OEA recommends that the following new condition be imposed: (a) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CNOTP shall immediately cease all work and notify OEA, the SHPO, and appropriate federally recognized tribes, pursuant to 36 C.F.R. § 800.13(b); and (b) OEA will then consult with the SHPO, CNOTP, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Consistent with OEA's recommendations: (1) the previously imposed Section 106 historic preservation condition will be removed (Condition 3); (2) the two previously imposed environmental consultation conditions regarding salvage activities will remain unchanged (Conditions 1 and 2); and (3) the recommended additional condition to address concerns regarding unanticipated discoveries during salvage activities will be imposed.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the March 5, 2015 decision is removed.
3. In addition to Conditions 1 and 2 regarding salvage activities imposed in the March 5, 2015 decision, CNOTP's abandonment exemption is subject to the new environmental condition as follows: (2)(a) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CNOTP shall

immediately cease all work and notify OEA, the SHPO, and appropriate federally recognized tribes, pursuant to 36 C.F.R. § 800.13(b); and (b) OEA will then consult with the SHPO, CNOTP, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.